

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR-05-273
v. : U.S. Courthouse
MOHAMMED RAHMAN, : Brooklyn, New York
Defendant. : January 5, 2006
: 11:00 o'clock a.m.
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TRANSCRIPT OF SENTENCE
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE

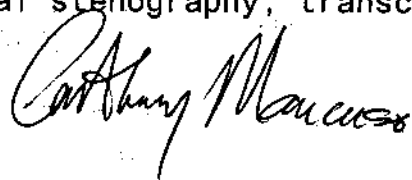
APPEARANCES:

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1 (Case called; both sides ready.)

2 MR. SMITH: Jack Smith and Roger Burlingame for the
3 United States.

4 MR. NIR: Ronald Nir for the defendant Mohammed
5 Rahman. Good morning, your Honor.

6 THE COURT: Good morning.

7 Okay. Mr. Nir, are you and your client ready to
8 proceed to sentence?

9 MR. NIR: Yes, your Honor.

10 THE COURT: Have you read the presentence report?

11 MR. NIR: Yes, I have.

12 THE COURT: Have you, sir?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: Any objections to the presentence
15 report?

16 MR. NIR: Any objection we had I gave in my letter
17 to the court.

18 THE COURT: Okay.

19 Sometimes they fall by the wayside. I take it yours
20 have not.

21 MR. NIR: No, your Honor.

22 THE COURT: Okay.

23 Remind me what they are.

24 MR. NIR: Judge, just in general there were some
25 difficulties in the English language with regard to my

1 client's brother who was questioned with respect to certain
2 actions. I had indicated to the probation officer that the
3 better part of valor would be to speak with that individual in
4 Arabic, not in English.

5 In addition, there were some problems that my client
6 actually had with regard to the marriage relationship between
7 him and Ms. Vernazza when he gave the wrong year in terms of
8 the date and Ms. Vernazza corrected that.

9 There were some minor points.

10 THE COURT: If you want me to address specific
11 changes to the presentence report, tell me what they are.
12 None of those issues with regard to the interview of the
13 brother or with regard to the marriage have any effect on the
14 sentence as far as I'm concerned.

15 MR. NIR: That's fine, your Honor.

16 THE COURT: Anything else with regard to the
17 advisory guideline calculation or the presentence report
18 before I hear from you about the appropriate sentence?

19 MR. NIR: No, your Honor.

20 THE COURT: Just so we're all on the same page, the
21 advisory guideline range is 33 to 41 months, correct?

22 MR. NIR: That is according to the presentence
23 report.

24 MR. SMITH: We made a motion for a two-point
25 enhancement for preparation and planning.

1 THE COURT: Where is that motion?

2 MR. SMITH: That is in the letter dated November 1,
3 2005. I have another copy here, your Honor.

4 THE COURT: Someone remind me why this was adjourned
5 the last time.

6 MR. SMITH: We adjourned it and there was
7 miscommunication about what date it was on.

8 THE COURT: That's right. Through no fault of your
9 own, you were not here.

10 MR. NIR: I actually came in on the next date and
11 found out that it was adjourned again.

12 THE COURT: Now, I got it.

13 What is the date of your letter?

14 MR. SMITH: The letter that makes the upward
15 adjustment motion is November 1 of 2005. We also submitted a
16 letter in response to Mr. Nir's's letter, which is dated
17 December 8 of 2005.

18 THE COURT: That I have three copies of,
19 compensating for that fact is that I don't have any copies of
20 your other letter.

21 You've seen it, I take it?

22 MR. NIR: Yes.

23 (Pause.)

24 THE COURT: Okay.

25 Mr. Nir, what's your response to the government's

1 application for an upward adjustment under the subsection
2 (b)(1) of 2J1.2.

3 MR. NIR: Judge, if I may, it appears that the
4 information that my client gave both to this court and to the
5 U.S. Attorney's Office was in full confidence and full effect
6 under the proffer agreement and at the time he took the plea.

7 My client actually gave all of the same information
8 that the government is seeking an upward adjustment for prior
9 to his taking a plea, and then with this court in taking the
10 plea.

11 In point of the fact, your Honor, the probation
12 report itself gave my client an extra point or points. Those
13 two points, I would argue, are already in the presentence
14 report because according to the plea agreement that we had
15 entered into my client would have been at a level 16 at the
16 time of sentence in this matter. In effect, the Probation
17 Department, by raising it to a level 18, actually gave the two
18 points that the government is seeking.

19 The upward adjustment that they are seeking is for
20 things that my client already has admitted to. It's not for
21 anything more or less than that.

22 The countenance --.

23 THE COURT: That's not a reason not to give it to
24 him. Maybe he gets points for candor. But what you say
25 doesn't suggest a reason not to give him the adjustment.

1 MR. NIR: No, your Honor.

2 In effect, your Honor, the government by now asking
3 for this, after having the plea agreement in force and effect
4 for several months, is asking the court to not abide by the
5 plea agreement that was entered into in this case.

6 THE COURT: I see.

7 MR. NIR: And to --.

8 THE COURT: Can I have the plea agreement?

9 MR. SMITH: If I may, judge, actually there was a
10 mistake by me in the plea agreement, but it's not this one.
11 We assessed planning and preparation in the plea agreement.
12 However, what I didn't do is we did not add an assessment in
13 there for his leadership role in this offense and that results
14 in the numbers that Mr. Nir is talking about.

15 THE COURT: I see.

16 MR. SMITH: Because I didn't put the four points in
17 for that, the Probation Department correctly did and -- but
18 they didn't put in these two points. The net effect is that
19 the probation guideline analysis is two points higher than the
20 plea agreement estimate.

21 THE COURT: I got you, I think. Hang on a second,
22 Mr. Nir, before you finish your argument.

23 (Pause.)

24 THE COURT: I see. So the probation officer jacked
25 it up four but didn't give you the two that you sought for

1 planning and preparation?

2 MR. SMITH: Exactly, judge.

3 THE COURT: Now, I get it.

4 MR. NIR: Both the planning and preparation and
5 leadership roles were both known to the government prior to
6 the plea agreement in this case and in point of fact there
7 were several proffer agreements in which my client described
8 those matters as well as other matters in an effort to
9 cooperate with the government in this matter.

10 And in other matters as well.

11 The fact of the matter is, your Honor, whether or
12 not he is the leader in this matter, a plea agreement was
13 entered into. More importantly, those leadership aspects, in
14 what the people performing this conspiracy, really in some
15 ways amounts to friends talking amongst friends as well.
16 Fawaz Habbas worked for my client in this matter and some of
17 the planning and preparation were his and that's based on the
18 tapes that were turned over to the government with respect to
19 this matter.

20 In point of fact, the ultimate incident against
21 Gemal Wahed in this matter was not in relation to my client.
22 In fact, the original plan was supposed to have happened the
23 day before this incident. The government has agreed to that
24 argument in prior discussions and the subsequent plan, the
25 plan that actually entered was a plan that Fawaz Habbas

1 actually generated on the date of that incident. My client
2 wasn't in New York. That may very well have been because the
3 intention was that he was not to be part of the actual
4 incident.

5 But those leadership roles and those increased
6 points that the government is asking for were all
7 contemplative of the plea agreement in this matter and they
8 were all known to the parties in full force and effect.

9 THE COURT: All right.

10 Well, let me say, right at the outset, how this gets
11 resolved has no bearing on the sentence that I will impose and
12 would not have done so even in a mandatory guideline range
13 era.

14 But the dispute in a way just puts a spotlight on
15 the horse trading that kind of goes on with guideline
16 adjustments.

17 The four level upward role adjustment wasn't in the
18 plea agreement, but there was no objection to it from the
19 defendant.

20 The two level upward role adjustment for planning
21 and preparation is in the plea agreement and it's only the
22 government's effort to get it into the guideline calculation
23 that has brought the objection on from the defendant.
24 Implicit in your remarks -- and I'll make it explicit for you
25 -- you're fine with these four levels as long as you don't get

1 the other two levels for planning and preparation, right?

2 MR. NIR: Well, judge, that's actually not fully
3 correct.

4 THE COURT: You never made an objection to the four
5 levels.

6 MR. NIR: I understand that, in that my argument
7 has always subsumed everything that the government is asking
8 also subsumes the arguments in the increased levels that the
9 Probation Department has garnered. You can argue whether or
10 not it should be increased by two levels or increased by four
11 levels or increased by six levels.

12 The fact of the matter is that all of that
13 information was known. My client cooperated, with myself
14 present, during the Probation Department interview. I cannot
15 take fault or error with respect to those things that my
16 client said in my presence at the time of the meeting with the
17 Probation Department. But my argument, your Honor, is that
18 those four levels subsume the two levels, that they are all
19 inclusive.

20 THE COURT: I understand your argument.

21 MR. NIR: Thank you, your Honor.

22 THE COURT: I don't begrudge you making it. It's
23 less precise than these guidelines purport to be. These
24 guidelines require us to look at the facts that bear on role
25 and then look at the facts that bear on planning and

1 preparation, decide whether those separate adjustments are
2 appropriate. There's the separate issue that you have alluded
3 to about holding the government to what it predicted in its
4 plea agreement, but you don't really mean that argument. If
5 you did you would have made an objection to the four level
6 upward adjustment.

7 Let me clear away this underbrush, because I say
8 again it's academic as far as I'm concerned, maybe it won't be
9 to some reviewing court. As far as I'm concerned this
10 resolution is academic to the appropriate sentence in this
11 case.

12 I'm going to resolve it in favor of the government
13 because the facts are in the government's favor. Obviously, a
14 role adjustment is appropriate. He led this conspiracy to
15 frame the victim of this crime, Abdul Wahed. The requisite
16 number of participants were involved in the crime. It's also
17 obvious to my mind -- and I so find -- that it involved the
18 sort of planning and preparation contemplated by subsection 3
19 of 2J1.2 (b), that is, if the offense was extensive in scope,
20 planning or preparation. It was for the reasons set forth by
21 the government in its letter.

22 So, the government's objection to the presentence
23 report is sustained. The guideline range is adjusted upward
24 two levels accordingly, which brings us to a total range
25 rather of 41 to 51, is that correct?

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1 MR. SMITH: That's correct, judge.

2 THE COURT: I'll say it for a third time that the
3 resolution of that sentencing dispute is not necessary within
4 the meaning of the Birmingham line of cases from the Second
5 Circuit to the sentence that I intend to impose here today.

6 Okay.

7 Do you want to be heard with regard to the
8 appropriate sentence?

9 MR. NIR: Judge, before I'm heard, I'm going to ask
10 that my client be given a moment to speak and make a statement
11 to the court.

12 THE COURT: Sure.

13 Go right ahead.

14 THE DEFENDANT: Good afternoon, your Honor.

15 THE COURT: Good afternoon.

16 Good morning, really.

17 THE DEFENDANT: Good morning. I'm sorry.

18 I have been a target of a mosque, called the Mosab
19 Nabri, located half block from Cleopatra Restaurant. That's
20 my brother's business. Since my brother made a donation --
21 and the check went to the Children and NYPD victims of 9/11
22 -- I posted the PABA letter on front door and the mosque
23 through Mr. Wahed --.

24 THE COURT: The mosque what? That's the name of the
25 mosque?

1 THE DEFENDANT: No. The mosque through Mr. Wahed
2 became aware of the donation. Mr. Wahed was hired sometimes
3 to do some cleaning and dish washing in the restaurant. I was
4 approached by two individuals from the mosque, Mr. Mohammed
5 and Mr. Wahed, to make a cash donation to the mosque.

6 Also they asked me to stop serving liquor, since we
7 are Muslims. I refused to give the cash donation. I was
8 afraid of what purpose the money would be used for. Also my
9 brother's business could not survive without serving liquor.

10 Since that moment I have not had a moment of peace.
11 Constant complaints were made to the police about the
12 restaurant. All of them was false complaints, some of them
13 about bombs or shootings or partial building collapsing. All
14 the complaints were made in a very busy time which is the
15 weekend nights to embarrass us in front of our customers.

16 The restaurant was vandalized. The glass of the
17 front door was shattered four times. My minivan was smashed
18 six times, three times before the incarceration and three
19 times after.

20 Mr. Wahed is very active at that mosque and I told
21 him at the time we were friendly that I'm on probation and any
22 violation will land me in jail. Mr. Wahed knew me as a
23 professional, one-man-band player and we're known to the
24 Arabic community.

25 THE COURT: And well what?

1 THE DEFENDANT: And well known to the Arabic
2 community and the Cleopatra business relied heavily on my
3 entertainment and my management and my brother cannot manage
4 the restaurant by himself. On March 27 of 2004 Mr. Wahed was
5 hired for one day to cover the absence of the original
6 dishwasher and in the middle of that night he harassed a
7 customer for tips.

8 Also, one of the waitresses asked him to lift two
9 boxes of soda. He bent down and looked under her skirt. I
10 called Mr. Wahed and I told him what he did was wrong. I paid
11 him and I asked him to leave. He came back three hours later,
12 around 5:00 o'clock in the morning, and he instigated an
13 altercation with me and three weeks from that date he made a
14 police report and accused me of assault.

15 I went to trial on a charge of attempted assault in
16 the third degree and I was convicted. I was convicted on
17 January 7, 2005.

18 Before that, on August 18 of 2004, Mr. Wahed asked
19 my codefendant, Mr. Fawaz Habbas for a ride home. On the way
20 home Mr. Habbas recorded a voice tape of Mr. Wahed. It is
21 part of the discovery, your Honor. Mr. Wahed offered
22 Mr. Habbas that if I paid \$15,000 to the mosque he will drop
23 the charge against me.

24 Also, on the same tape, when Mr. Wahed -- and he
25 said it's either the money or the jail. He's between this and

1 this and he said that we will go from the mosque directly to
2 the court to drop the charge.

3 When Mr. Wahed -- when Mr. Habbas asked Mr. Wahed
4 whether this money might fall in the hands of terrorists
5 overseas Mr. Wahed on the tape says there is no terrorists
6 overseas. Even Hamas is not a terrorist organization.

7 On same tape Mr. Wahed says that the terrorists are
8 the Jews and they are the ones that runs America. He says
9 that while our nation is at war on terror, your Honor.

10 More than that, Mr. Wahed wants me to lose the
11 custody of my son Kareem. That I thought was too much for me,
12 your Honor. I was awarded custody of my son and I raised him
13 alone since he was 18 months old. I was both a father and a
14 mother to him. He's ten years old now and at PS 1 in
15 Brooklyn. I could not bear the fact that Kareem would go to
16 his mother since she never played an active role in his
17 upbringing.

18 Kareem is the third child by her third husband. She
19 gave up each of her other children to their fathers before
20 they were two years old.

21 That was what provoked me to do this big mistake. I
22 thought at that time he will be deported since him and the
23 sheik conspired to extort \$15,000 and God knows what this
24 money will go for.

25 I have been always pro-government, your Honor. My

1 brother bought the business on March of 2003. It was the
2 beginning of the Iraqi war. I contacted the FBI to report a
3 credit card fraud by middle eastern descent in the Bay Ridge
4 area and every time I give the federal agents the credit
5 cards, Agents Roth and Lender, called me to their office, in
6 Kew Gardens, two out of 15 occasions, they awarded me
7 financially. I was not doing it for the sake of the money,
8 your Honor. I don't know that they offer money for this kind
9 of information. I did it to pay loyalty to my country.

10 Also, two months after my apprehension -- also two
11 months after my apprehension I have a meeting with Mr. Jack
12 Smith at his office and with his assistants. I confessed to
13 the details of my crime. I gave Jack Smith a piece of paper
14 with my own handwriting indicating six different criminal
15 activity that goes on in the Bay Ridge area by middle eastern
16 descent. One of these criminal activity was a big ring that
17 selling narcotics called hashish.

18 I give Mr. Jack Smith three names of individuals,
19 Tunisian guy by name of Sabri and two Moroccan guys named
20 Nabir and Soni. Two months later from that date I read in the
21 Daily News on August 24 of 2005 that a ten million dollar drug
22 ring was busted in the Bay Ridge area.

23 And a week later one of the codefendants was
24 assigned to my floor. I see the exact names on the
25 indictment, 05-323 and now I stand before you, your Honor,

1 after I examined myself for the past nine months at the
2 Metropolitan Detention Center. I have now learned to think
3 before acting on my emotions and not reacting.

4 Back in the year 2000 I took the oath and I became a
5 United States citizen. I have always been very proud to be an
6 American and raise my son in this great country. I have
7 caused my loved ones extreme hardships. I may lose my son who
8 means more to me than my own life. I have hurt the people
9 that love me and need me, like my son, my wife, Barbara, my
10 father, he's 82 years old and my mother she's 77 years old, my
11 brother my sister, my nieces.

12 This has tormented me day and night since my
13 incarceration. Pleading guilty was my first step in
14 recognizing the wrong that I have done, your Honor. And now I
15 stand humble before you here in federal court, with remorse
16 and regret for my actions.

17 I want you to know, your Honor, that I'm truly
18 sorry. I'm truly sorry for everything that I have done,
19 honestly. And I will never do anything to jeopardize the
20 freedom that I have in this great country. May God bless you,
21 Judge Gleeson, and bless the United States of America.

22 Thank you.

23 THE COURT: The fault is probably mine. But I
24 couldn't understand, given what you said about the mosque and
25 Wahed and the contribution to the 9/11 fund and then you're

1 hiring Wahed. I couldn't understand why in early 2004, given
2 that history, you hired him in the restaurant, even for a
3 night.

4 THE DEFENDANT: He was hired sometimes a total of
5 maybe 20 days. He's not a steady employee. When we need some
6 cleaning or dish washing and we don't have the dishwasher, we
7 hired him because he hang out in front of the mosque.

8 THE COURT: Was this after they begun to pressure
9 you?

10 THE DEFENDANT: No. Exactly in the beginning of
11 2004, at the time that I made the donation to the NYPD.

12 THE COURT: When was that donation?

13 THE DEFENDANT: It was in January of 2004 and
14 Mr. Jack Smith have a copy of that.

15 THE COURT: When did the Cleopatra open, in 2003?

16 THE DEFENDANT: In 2003, the beginning of the Iraqi
17 war, 2003, March.

18 THE COURT: Thank you.

19 Mr. Nir.

20 MR. NIR: Your Honor, my client's family, some of
21 whom he's described, his wife Barbara, his brother, his
22 parents and other relatives, nieces, and the like are seated
23 in the audience in the second row.

24 As my client has indicated, he is very remorseful
25 and sorry for everything that's taken place here and it's

1 apparent, your Honor, that no matter, you know, what we say
2 and that this court will sentence my client to what this court
3 believes is appropriate. We would argue, your Honor, that an
4 appropriate sentence in this matter would be more along the
5 lines of what was agreed to in the plea agreement and
6 somewhere in the period of 27 to 33 months.

7 And to give him more than that, to exceed that, your
8 Honor, I think that it -- not only will it hurt my client and
9 certainly punishment is to hurt the defendant. But it will
10 also hurt my client's family and there's at least one person
11 who is not here today and that is my client's son, who is now
12 ten years old. He was nine years old when this all started to
13 take place and that is as my client has indicated the person
14 who was first and foremost in his mind at that time.

15 THE COURT: Okay.

16 One thing should be clear -- you're right -- I'm
17 going to impose a sentence I think is just. It's not
18 notwithstanding what gets said here. It's, in part, in light
19 of what gets said here.

20 Secondly, you mentioned what's stated in the plea
21 agreement. It's not my understanding that there's an agreed
22 to sentence.

23 MR. NIR: There was not.

24 THE COURT: Was there any discussion prior to the
25 entry after pleas that the government's intention, which since

1 has been acted upon, was to seek an upward departure?

2 MR. NIR: There was nothing discussed at that time
3 about the government seeking an upward departure.

4 THE COURT: Anything said to you then which is
5 inconsistent with the government's current application for an
6 upward departure?

7 MR. NIR: Since nothing was ever discussed regarding
8 an upward departure, I can't say that there was anything
9 discussed at all with regard to that aspect.

10 THE COURT: Well, no. It's not true. I mean it
11 strikes me that conversations along the lines of we're not
12 going to take a position where within the range, for example,
13 might obviously be inconsistent with the government now
14 saying, judge, please upwardly depart.

15 The reason I mention this is you brought it up. You
16 characterized this agreement as an agreement to a sentence
17 within that estimated range and I want to know exactly what
18 you mean by that.

19 MR. NIR: Well, judge, the agreement imposes a
20 maximum level by which my client will not file an appeal and
21 he agreed not to file an appeal should he be sentenced to I
22 believe 60 months or less. It was my understanding and I will
23 say that the government never said anything other than they
24 won't take any position with regard to a sentence, in regard
25 to this matter. Nothing was ever discussed with regard to any

1 enhancement of anything that was requested in the agreement.

2 THE COURT: Okay.

3 Mr. Smith.

4 MR. SMITH: Judge, on that point, just to I think
5 reiterate what Mr. Nir said, we did have discussions.

6 Specifically, one of the issues in the plea agreement was what
7 Mr. Rahman would plead to and he pled to rather than a charge
8 with a five-year cap, he pled to a charge with a longer cap.
9 And another issue was this waiver of the plea agreement. --

10 THE COURT: Waiver of appeal.

11 MR. SMITH: I'm sorry. Waiver of appeal, your
12 Honor. Though we did not discuss specifically what motions
13 the government's would be making. It was implicit in these
14 negotiations that the government reserved the right to make
15 argument that he be sentenced higher than the guideline range
16 in the case and I think that's consistent with what Mr. Nir
17 said.

18 Your Honor, in addition to that, as to one of the
19 things Mr. Rahman said, Mr. Rahman did meet with the
20 government prior to entering his plea. He did admit his guilt
21 in this offense and he did provide information regarding
22 criminal conduct that he for the most part knew of third-hand,
23 but some things he knew of firsthand.

24 I want to make clear for the record that none of his
25 information has been used in any case. The case that

1 Mr. Rahman speaks of now I frankly don't even know of it and
2 I'm certain, because this is my case, that no information
3 given by Mr. Rahman was used in any sort of investigation by
4 the government.

5 Your Honor, that said --.

6 THE COURT: What about this illusion to having been
7 a paid informant?

8 MR. SMITH: Yes, your Honor.

9 I have spoken to the agent who -- and I addressed
10 this in the government's December 8 letter. I spoke to the
11 FBI agent who worked with Mr. Rahman. Mr. Rahman was an
12 informant working for money. He was not paid a large sum of
13 money and no arrests were ever made using his information. He
14 claimed to have information about credit card fraud. The FBI
15 agent involved, who Mr. Rahman stated his name, was on a
16 credit card squad with the FBI. I think there were, if I
17 remember correctly, there were discussions about wiring up the
18 Cleopatra for the purpose of these investigations. In
19 essence, it never went anywhere.

20 The agent did have a good relationship with
21 Mr. Rahman and didn't leave on bad terms with him. But the
22 impression I got from speaking to him was this was not
23 something that he was doing out of the goodness of his heart.
24 This was a situation, in most situations with the FBI, where
25 people are paid for providing information. I don't think

1 Mr. Rahman was provided very much money at all because I don't
2 think very much was done.

3 THE COURT: Okay.

4 MR. SMITH: Your Honor, in a situation like this, in
5 such an unusual crime, and under 3553 A, the history and
6 characteristics of the defendant are paramount. Before the
7 court you have a man who has twice been convicted of assault
8 and in one of those cases he brutally assaulted and
9 hospitalized a man in Manhattan, broke his teeth, broke his
10 jaw. To this day he's failed to accept responsibility for
11 that crime.

12 He's also the person he set up here. I think it
13 bears mentioning here. The innocent person who he conspired
14 to accuse of a crime that could have given that person a life
15 sentence, that's a person that Mr. Rahman stands convicted of
16 assaulting as well. So he framed a person he assaulted
17 because that person went to the police. I think Mr. Rahman
18 inability to accept responsibility and his attempts to justify
19 his behavior in this case really provide a window into what a
20 dangerous and disturbed person he is.

21 This defendant is unlike the other defendants that
22 this court has sentenced in this case. He has a record of
23 violence. He had the central and motivating role in this
24 offense and more than any other he has tried to justify what
25 he did by demonizing the victim, by going so far as to suggest

1 that the victim is somehow in league with terrorists to
2 justify his behavior in this case.

3 THE COURT: What is your response to the -- what I
4 understood to be -- the claim by Mr. Rahman that there's a
5 tape-recording that bolsters his claim that there was an
6 extortion, a shakedown attempt, by Wahed of him?

7 MR. SMITH: There was a tape, your Honor. And, in
8 fact, when we first met Mr. Rahman in the course of this
9 investigation when he sat down and talked with the government
10 before this plot became unearh, he immediately provided us
11 with a copy of that tape. And on that tape there are
12 discussions between Mr. Rahman and Mr. Habbas about money
13 being paid to drop the charges.

14 MR. NIR: I just want to interrupt. Between
15 Mr. Abdul Wahed and Mr. Habbas.

16 MR. SMITH: I apologize.

17 Mr. Abdul Wahed and Mr. Habbas about money being
18 provided to drop the charges in this case. In fact, one of
19 the things on the tape that's clear is Mr. Abdul Wahed says I
20 don't want the money for me. I don't need anything.
21 Something like I only need the clothes on my back, something
22 along those lines. The money should be provided to the
23 mosque.

24 However, in the course of the government's
25 investigation, we spoke with Mr. Habbas who cooperated with

1 the government about this tape and what he stated to the
2 government is that the tape that the government was eventually
3 provided had been edited and that certain portions of that
4 tape where Mr. Abdul Wahed said things that didn't help
5 Mr. Rahman and where statements were made that made it clear
6 that Habbas was the one who was soliciting the payment attempt
7 had been edited out of the tape.

8 In fact, as we prepared for trial in this case, I
9 believe the court signed a subpoena for -- signed a subpoena
10 for the defendant to provide us with the original tape that
11 was used in this case. So while the victim certainly was
12 willing to drop the charges if a certain amount of money was
13 paid to the mosque. There's no question about that.
14 Mr. Rahman characterization of that as a bribe that he meant
15 was incorrect. What it was was his response to an offer by
16 Mr. Habbas to Mr. Rahman to do that thing, to drop the
17 charges.

18 THE COURT: So Habbas told you that on behalf of
19 Mr. Rahman he offered to pay Wahed to walk away from the
20 assault case?

21 MR. SMITH: Exactly. He offered to have him paid,
22 not necessarily the money was going to come from him, that he
23 would get the sum of money.

24 THE COURT: Sorry. I interrupted you.

25 MR. SMITH: Your Honor, I don't have much more to

1 say. I think this crime speaks for itself. This victim was
2 unjustly imprisoned for two months. He is, in essence,
3 kidnapped and held against his will. Mr. Rahman used the
4 federal government, in essence, to kidnap this person and but
5 for -- and I think this is the final point -- but for this
6 crime being unearth Mr. Abdul Wahed could have spent the rest
7 of his life in prison, likely would have spent the vast
8 majority of the rest of his life in imprison.

9 THE COURT: What do you mean by that? Based on the
10 frame-up?

11 MR. SMITH: Yes. He faced a life sentence, your
12 Honor. Statutorily, because the crime that he was accused of,
13 the statutory maximum --.

14 THE COURT: That's the statutory max. Are you
15 referring to the -- I thought you might be referring to the
16 fact that plan one, which never was executed, was to frame him
17 for rape.

18 MR. SMITH: Well, that's true, judge. No. When I
19 spoke just now, I was referring to the federal crime that he
20 framed him for, which would be retaliating against a witness
21 in a federal criminal case.

22 THE COURT: That doesn't really get people a life
23 sentence, statutory maximums notwithstanding.

24 MR. SMITH: Given Booker and 3553 A, though
25 practically I agree with the court, certainly it's a situation

1 where Mr. Abdul Wahed could have been in prison for many
2 years.

3 THE COURT: It's nothing no sneeze at. I don't mean
4 to suggest that. Who's idea, from the government's
5 perspective, was the original idea to have Nadia Zeid falsely
6 accuse Wahed of rape?

7 MR. SMITH: Your Honor Mr. Atif Mahmoud also
8 cooperated with the government. He was another coconspirator
9 here, informed us that he was approached by the defendant and
10 by Habbas to do that. He said, no, that I'm not going to have
11 her do that. That plan was then dropped.

12 THE COURT: Atif Mahmoud attributed it to Habbas and
13 this defendant?

14 MR. SMITH: Right.

15 THE COURT: Anything further?

16 MR. SMITH: No, your Honor.

17 THE COURT: Anything further from the defendant?

18 MR. NIR: I'll take umbrage only with one thing
19 Mr. Smith has indicated, that is, your Honor, that the
20 original tape was provided to the government and in my
21 estimation, your Honor, there was no difference between the
22 original tape and the earlier tape which had been provided to
23 the government when Mr. Rahman and other counsel met in the
24 government's offices.

25 And the fact of the matter is that the statement did

1 not come from Mr. Habbas as to the money. The first approach
2 on the money in my estimation came from Gemal Wahed with
3 respect to this matter.

4 THE COURT: Habbas and the defendant can't both be
5 right on this edited tape thing. Did you get the original?

6 MR. SMITH: We got a tape from Mr. Nir and we
7 submitted it to be tested. I think when Mr. Nir gave it to us
8 he couldn't say for certain that there was the original, only
9 that this was the tape the family had given him.

10 MR. NIR: I was informed, your Honor, that it was in
11 the location where my client had indicated it would be found,
12 that that was the original tape, that there were no others
13 besides that.

14 THE COURT: Okay.

15 Anything further?

16 MR. NIR: No, your Honor.

17 THE COURT: Anything further from you?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: All right.

20 Well, there's parts of this case that are
21 complicated and nuanced and still subject to some dispute.
22 But to the extent there are some outstanding disputes, like
23 whether this tape that was eventually turned over was the
24 original or just the original of an edited tape, is something
25 else and doesn't matter to my mind.

1 The heart of the case is not complicated and not
2 nuanced and not subject to dispute. And, that is, to right
3 what you perceived to be wrongs committed against -- rightly
4 or wrongly -- you started this ball rolling towards federal
5 agents arresting this Abdul Wahed. And, if all went according
6 to your plan, you would still be out there in the street
7 conducting your business and Abdul Wahed would be at the front
8 end of the a very long prison term.

9 I've said this in connection with your codefendant
10 sentencings. I'll say it again. This is not a typical
11 obstruction of justice. This case is outside what we call the
12 heartland. Typically, obstructions of justice entail people
13 engaging in tactics, sometimes lying, sometimes hiding
14 documents, to fend off government scrutiny of themselves or
15 their friends. It's rare -- and in my experience unique --
16 that an obstruction of justice is more than affirmative,
17 aggressive, predatory type of offense, like it is here, the
18 object of which is to get some innocent person -- and frankly
19 I don't really care from a sentencing perspective -- I don't
20 care if in your view he was not innocent, in the sense that
21 you describe in your narrative, he was innocent of the crime
22 that he got locked up for and thrown in jail for and would
23 have spent years in jail for and that's the crime that you
24 framed him for. It's an outrageous, an absolutely outrageous
25 manipulation, distortion of the processes of this justice

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1 system.

2 The case falls outside the heartland. I'm not
3 persuaded by your plea for leniency here today, given the
4 history that the government has alluded to, given the
5 egregious nature of this crime.

6 You're sentence is eight years in the custody of the
7 Attorney General. I've considered all the factors under 3553
8 A. I have not specifically set forth on the record all of the
9 results of that consideration. I've set forth on the record
10 what I consider to be the part of the case, which is the case
11 falls outside the heartland.

12 It's an eight-year sentence to be followed by a
13 three year term of supervised release. A special condition of
14 supervised release is that you received mental health
15 treatment as directed by the Probation Department. There's a
16 one hundred dollar special assessment, but no fine.

17 You have a right to appeal the sentence I have just
18 imposed, Mr. Rahman. If you wish to do that, you have to file
19 a notice of appeal, in this courthouse, within ten days or you
20 lose your right to appeal. If you can't afford a lawyer to
21 represent you, one will be appointed for you to prosecute the
22 appeal.

23 Do you understand what I have said about the appeal?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Is there a place of incarceration you

1 want me to designate? Do you want me to have it as a
2 recommendation to the Bureau of Prisons that he be
3 incarcerated as close as possible to New York?

4 MR. NIR: Yes, your Honor.

5 THE COURT: I'll do that.

6 Anything else that I have not addressed that I
7 should have addressed? Are there open counts?

8 MR. SMITH: Yes, your Honor. And the government
9 would move to dismiss.

10 THE PROBATION OFFICER: Your Honor, is that sentence
11 to run consecutive to the previous sentence?

12 MR. NIR: Judge, he apparently received a thirty-day
13 sentence in the criminal court -- a ninety-day sentence in
14 the criminal court. I would ask that that sentence run
15 concurrently.

16 THE COURT: On the what?

17 MR. NIR: On the attempted assault charge.

18 THE COURT: Of Wahed?

19 MR. NIR: Of Wahed.

20 THE COURT: No. It was not my intention to run it
21 concurrently. That's why I didn't mention it.

22 Anything further?

23 MR. SMITH: No, your Honor.

24 THE COURT: Have a good day.

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